# Supreme Court of the United States

OCTOBER TERM, 1968

## No. 841

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TOMMIE E. L. WILLIAMS,

*Petitioner,*

—v.—

CITY OF OKLAHOMA CITY, ET AL.,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

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THE MUNICIPAL CRIMINAL COURT
OF THE CITY OF OKLAHOMA CITY
STATE OF OKLAHOMA

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[Filing Stamp omitted in printing]

Case No. 2920

THE CITY OF OKLAHOMA CITY, PLAINTIFF

—*vs*—

TOMMIE E. L. WILLIAMS, DEFENDANT

JUDGMENT AND SENTENCE—Filed November 6, 1967

NOW, on this 6th day of November, 1967, the same being a juridical day of said Court, and the time appointed for judgment in the above entitled cause, and said cause coming on for judgment, and the Defendant, Tommie E. L. Williams being personally present in open Court, and having been legally charged with the offense of operating a motor vehicle while under the influence of intoxicating liquor and having been duly arraigned thereon, and having pleaded not guilty and having been duly and legally tried and convicted of said offense, in said Court, the prisoner is now informed of the nature of the charge, of this plea and of the verdict, and is asked by the Court whether he has any legal cause to show why judgment and sentence should not be pronounced against him and alleging no sufficient cause why judgment and sentence should not be pronounced against him, and none appearing in the Court, the Court does now hereby adjudge and sentence the said Defendant for the said offense by him committed.

IT IS THEREFORE ORDERED AND ADJUDGED by this Court that the Defendant, pay a fine of fifty dollars ($50.00) to the City of Oklahoma City and be imprisoned in the City Jail of Oklahoma City, Oklahoma

County for a period of 90 days from this date and that he pay the costs herein taxed at $——. It is ordered by the Court that the Chief of Police of the City of Oklahoma City, confine the said Defendant in the City Jail of Oklahoma City, Oklahoma County, Oklahoma for a period of 90 days.

/s/ Phillip E. Lambert
Judge, Municipal Criminal Court

[Officer's return and Attestation omitted in printing]

IN THE MUNICIPAL CRIMINAL COURT
OF THE CITY OF OKLAHOMA CITY

NOTICE OF INTENTION TO APPEAL AND REQUEST FOR CASEMADE AT PUBLIC EXPENSE—November 15, 1967

COMES now Defendant, Tommie E. L. Williams, and gives notice in open court of his intention to appeal to the Court of Criminal Appeals of the State of Oklahoma from the verdict and judgment rendered against him herein on the sixth day of November, 1967, and requests that this Notice be entered on the trial docket of this Court as provided by law. Defendant further requests that Casemade be prepared at public expense by reason of his being an indigent person unable to furnish the costs of Casemade, as more completely appears from his Affidavit, attached hereto, labeled "Exhibit A" and made a part hereof.

Dated this 15th day of November, 1967.

/s/ Jon F. Gray
JON F. GRAY
Attorney for Defendant
Staff Attorney,
Legal Aid Society

## AFFIDAVIT

STATE OF OKLAHOMA )
) ss:
COUNTY OF OKLAHOMA )

TOMMIE E. L. WILLIAMS, being of legal age and first duly sworn upon oath, states that he is the Defendant named in the case, City of Oklahoma City -vs- Tommie E. L. Williams, No. 2920, in the Municipal Criminal Court of the City of Oklahoma City, Oklahoma County, Oklahoma; that Defendant has filed his Notice of Intention to Appeal the judgment and verdict rendered herein in said Court on the sixth day of November, 1967, to the Court of Criminal Appeals of the State of Oklahoma; that affiant is a married person, with the duty upon him of supporting his wife and eleven (11) children; that Defendant is without funds to perfect said appeal or to provide security for costs therein; that he has no property or relative or other friends or acquaintances willing to assist him by providing said costs; and that neither he nor his attorney, who represented him, is able to make up a full, complete proper and adequate transcript from memory.

TOMMIE E. L. WILLIAMS
Defendant

[Jurat omitted in printing]

IN THE MUNICIPAL CRIMINAL COURT
OF THE CITY OF OKLAHOMA CITY
OKLAHOMA COUNTY, OKLAHOMA

No. 2920

THE CITY OF OKLAHOMA CITY, PLAINTIFF

—*vs*—

TOMMIE E. L. WILLIAMS, DEFENDANT

JOURNAL ENTRY OVERRULING DEFENDANT'S APPLICATION FOR CASEMADE AT PUBLIC EXPENSE—Filed December 6, 1967

Now, on this Sixth day of December, 1967, this cause comes on for hearing after regular setting and notice upon the application of defendant for a casemade at public expense, which was filed herein on the 15th day of November, 1967, the City of Oklahoma City being present by its counsel of record and defendant being present in person and by his attorney, Jon F. Gray, Staff Attorney, Legal Aid Society of Oklahoma County, Inc.; the Court, having examined the Briefs submitted in support of both parties' positions, having heard the testimony of Defendant sworn upon oath, having heard the arguments of counsel and being fully advised in the premises, finds that:

1. The questions of law and fact raised by defendant's appeal are not wholly without merit, but rather are ones with substantial arguments on both sides.

2. The questions raised by defendant's appeal cannot be presented to the proper appellate Court, by an appeal by Transcript of Record, but must be presented by the preparation of at least a partial Casemade herein.

3. The application of defendant for a casemade at public expense is in proper form and has been timely filed in this court.

4. Defendant is and qualifies under the law in Oklahoma as an indigent person, who is unable to

furnish funds to perfect said appeal or to provide security for costs in connection with his appeal and that he has no property nor relatives nor other friends or acquaintances which can be the source of security for costs herein.

5. Neither defendant nor his attorney of record can make up a full, complete, proper, and adequate transcript of the testimony and proceedings in said cause from memory,

but that there is no statutory authority by which to grant relief and, therefore, the application of defendant for a casemade at public expense should be denied.

IT IS, THEREFORE, THE ORDER, JUDGMENT, AND DECREE of this Court that the application of defendant that casemade be prepared at public expense by reason of his being an indigent person, is hereby denied, with exceptions allowed to defendant.

/s/ PHILLIP E. LAMBERT
PHILLIP E. LAMBERT
Judge of the
Municipal Criminal Court

APPROVAL AS TO FORM:

/s/ JON F. GRAY
JON F. GRAY, Attorney for Defendant
Staff Attorney—Legal Aid Society
1455 Westwood Avenue
Oklahoma City, Oklahoma 73108
MElrose 1-1503

.....
Attorney for Plaintiff

IN THE COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

# A-14553

PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner, Tommie E. L. Williams, and states to the Court that:

I

Respondent, The City of Oklahoma City, a municipal corporation, hereinafter referred to as Respondent City, is a municipal corporation duly established, operating in and doing business under the laws of the State of Oklahoma. Respondent The Municipal Criminal Court of the City of Oklahoma City, is a municipal Court duly established under the statutes of the State of Oklahoma. Respondent Phillip E. Lambert is the presiding Judge of the Respondent Municipal Criminal Court of the City of Oklahoma City.

II

Your Petitioner is a citizen and resident of the State of Oklahoma who is an indigent person, according to his affidavit filed herein, marked Exhibit "4", attached hereto and made a part hereof, and according to the adjudication of Respondent Phillip E. Lambert, Judge of the Municipal Criminal Court of the City of Oklahoma City, hereinafter referred to as Respondent Judge Lambert, which is attached hereto, marked Exhibit "5" and made a part hereof.

III

Your Petitioner, hereinafter referred to as Defendant, is a Defendant in a certain action prosecuted by Respondent City in the Court of Respondent Municipal Criminal Court of the City of Oklahoma City, hereinafter referred to as Respondent Court, which cause is entitled, "The City of Oklahoma City, a municipal corporation, versus Tommie E. L. Williams," Number 2920, as more specifi-

cally appears from the Information filed against him which is attached hereto, marked Exhibit "1" and made a part hereof. After the Information was filed against him in said cause, Defendant pled "Not Guilty," trial was held to a jury, and verdict, judgment, and sentence were rendered against him, as more particularly appears from the Appearance Docket of Respondent Court, attached hereto, marked Exhibit "6" and made a part hereof, and from the Judgment and Sentence of Respondent Court, which is attached hereto, marked Exhibit "2" and made a part hereof.

IV

Defendant timely filed his Motion for New Trial, which is attached hereto, marked Exhibit "3" and made a part hereof and which was overruled by Respondent Judge Lambert. (Exhibit 5) Defendant then gave notice of his intention to appeal to this Court and requested in writing that a case made be furnished him at public expense. (Exhibit 4)

V

Respondent Judge Lambert heard Defendant's application for a case made at public expense on the Sixth day of December, 1967, and entered his order overruling the same. In the order of Respondent Judge Lambert, (Exhibit 5) he made the following findings: (a) Defendant's appeal is not wholly without merit, (b) Defendant's appeal cannot be pursued by Transcript of Record, but must be presented by at least a partial case made, (c) Defendant's application for case made at public expense is in proper form and timely filed with Respondent Court, (d) Defendant qualifies as an indigent person under the law of Oklahoma, and (e) Neither Defendant nor his attorney could make up a transcript of the testimony and proceedings from memory. Respondent Judge Lambert's ruling was expressly based upon a lack of ordinance or statute authorizing him to grant the relief prayed for.

VI

Counsel for Defendant, Jon F. Gray, states that he is a staff attorney with The Legal Aid Society of Oklahoma

County Inc., and is therefore serving Defendant without any expense to him for attorney's fee.

VII

The Fourteenth Amendment to the United States Constitution prohibits any state from denying to any person within its jurisdiction the equal protection of the laws. Respondent City and Respondent Court are expressly created by statutes of the State of Oklahoma. They continue their existance and operation by authority of the statutes of the State of Oklahoma. The funding of and operations of all three (3) respondents are strictly authorized and controlled by the Constitution, statutes, and Courts of the State of Oklahoma. By its Constitution and statutes, the State of Oklahoma gives to a citizen convicted of a misdemeanor in any of its lower Courts the absolute right to appeal said conviction by case made to this Honorable Court. Since this right is granted to all citizens within the jurisdiction of this state, the exercise of it cannot be predicated upon the Defendant's ability to pay the costs of said proceedings, under the prohibition of the Fourteenth Amendment of the United States Constitution. The above mentioned refusal of Respondents to grant Defendant's application for a case made at public expense is a clear violation of Defendant's Constitutional Right.

VIII

Time is now of the essence. The State of Oklahoma has by statute given Defendant 120 days from November 6, 1967, in which to appeal the judgment and sentence against him. Respondents have already caused Defendant to use approximately six-(6) weeks of this time in exhausting all remedies previously available to him. The instant Petition is Defendant's only adequate remedy at law.

WHEREFORE, Defendant, being otherwise remedyless, prays this Honorable Court to issue an Alternative Writ of Mandamus requiring and compelling the said Respondent Judge Lambert to make all such orders as

are necessary to provide for preparation and settling of case made and compelling Respondent City, its agents, servants and employees, to take all such steps as are necessary to provide for the costs of transcription and preparation of case made, and requiring all three (3) Respondents to comply with their clear statutory and Constitutional duty in the premises, to provide Defendant a case made as prayed for at public expense and without delay, and for such other relief as may be just and proper in the premises.

TOMMIE E. L. WILLIAMS
Defendant

By .....
JON F. GRAY
Staff Attorney, Legal Aid Society of Oklahoma County, Inc.

Attorney for Defendant

[Jurat omitted in printing]

# IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

No. A-14,553

TOMMIE E. L. WILLIAMS, PETITIONER

—*vs*—

THE CITY OF OKLAHOMA CITY, a municipal corporation; THE MUNICIPAL CRIMINAL COURT OF THE CITY OF OKLAHOMA CITY; and PHILLIP E. LAMBERT, Judge thereof, RESPONDENTS

MEMORANDUM OPINION—Filed April 3, 1968

BUSSEY, J.:

This is an original proceeding in which Tommie E. L. Williams seeks an order of this Court directing the preparation of casemade at the expense of the City of Oklahoma City in order that he may perfect an appeal to this Court from the judgment and sentence rendered against him in the Municipal Criminal Court of Oklahoma City, where he was charged, tried and convicted for a violation of the city ordinance of Oklahoma City and sentenced to serve 90 days in the city jail and a fine of $50.00. The petitioner, an indigent represented by the Legal Aid Society, made a timely request for a casemade at city expense and at a hearing, conducted before the trial judge, it was determined that he was unable to pay for a casemade and would, if convicted in state court for a violation of state statute, be entitled to a casemade at public expense. His application for casemade was denied by the trial court for the reason that neither the statutes of the State of Oklahoma, nor the city ordinances of Oklahoma City, authorize the preparation of a casemade at city expense in order that an indigent person may perfect an appeal to this Court. We are of the opinion that the trial court correctly ruled that neither the statutes of the State of Oklahoma nor the city ordinances of Oklahoma City authorize the preparation of casemade or

transcript at city expense, and this leads us to a consideration of the petitioner's allegation that to deny him the preparation of casemade at city expense would be a denial of the equal protection clause of the Federal Constitution made obligatory upon the states by the 14th Amendment of the Constitution of the United States. The petitioner does not cite authority where the Supreme Court of the United States has ever ruled that an indigent person has a right to casemade at city expense in order to perfect an appeal from a conviction for a violation of city ordinance. Although we have carefully reviewed numerous holdings of the Supreme Court of the United States, we are unable to find a single instance where by dicta or otherwise they have intimated that an indigent person, convicted for a violation of a city ordinance, quasi criminal in nature and often referred to as a petty offense, is entitled to a casemade or transcript at city expense in order to perfect an appeal from said conviction. This being true, we are of the opinion that the relief prayed for should be, and the same is hereby, denied. WRIT DENIED.

ORIGINAL PROCEEDING in which Tommie E. L. Williams seeks an order of this Court directing the preparation of casemade at city expense. WRIT DENIED.

JON F. GRAY
Legal Aid Society
Attorney for Petitioner

ROY H. SEMTNER
Municipal Counselor

JERRY R. FENT
Asst. Munic. Counselor
Attorneys for Defendant

OPINION BY BUSSEY, J.,
TOM BRETT, J. Concurs.

# SUPREME COURT OF THE UNITED STATES

No. 167 Misc., October Term, 1968

TOMMIE E. L. WILLIAMS, PETITIONER

*v.*

CITY OF OKLAHOMA CITY, ET AL.

On petition for writ of Certiorari to the Court of Criminal Appeals of the State of Oklahoma.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 841 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

December 16, 1968

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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1968**

## No. 841

---

TOMMIE E. L. WILLIAMS,

*Petitioner,*

*v.*

CITY OF OKLAHOMA CITY, *et al.*,

*Respondents.*

---

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

---

## BRIEF OF PETITIONER

---

JON F. GRAY
Staff Attorney
Legal Aid Society of Oklahoma County, Inc.
1455 Westwood Avenue
Oklahoma City, Oklahoma 73108

*Attorney for Petitioner*

---

**PETITION FOR CERTIORARI FILED APRIL 29, 1968**
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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1968**

## No. 841

TOMMIE E. L. WILLIAMS,

*Petitioner,*

*v.*

CITY OF OKLAHOMA CITY, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

## BRIEF OF PETITIONER

Petitioner prays that Respondents be required to furnish him a written record *forma pauperis* to be used in appealing his conviction of a misdemeanor in municipal court to the Court of Criminal Appeals of the State of Oklahoma.

### Opinions Below

The opinion of the Municipal Criminal Court of Record of the City of Oklahoma City, Oklahoma, refusing a case-made, or written record, *forma pauperis,* entered on the Sixth day of December, 1967, is not officially reported but is a part of the record certified to this Court (A. 4).

The opinion of the Court of Criminal Appeals of the State of Oklahoma, entered on the Third day of April, 1968, appears at 39 Okla. Bar Assn. Jour. 588. It is officially reported as *Williams* v. *Oklahoma City,* Okl.Cr., 439 P.2d 965 (1968), and is a part of the record certified to this Court (A. 10-11).

## Jurisdiction

The judgment of the Court of Criminal Appeals of the State of Oklahoma was entered April 3, 1968, and is a final judgment since rehearings to that court are not permitted in original actions. Petition for Writ of Certiorari was filed herein on April 29, 1968. Jurisdiction is conferred by U. S. Const., Fourteenth Amendment, Sec. 1 and 28 U.S.C. 1257(3).

## Constitutional Provisions and Statutes Involved

The ordinances of the City of Oklahoma City, Oklahoma providing for the operation of the Oklahoma City Municipal Criminal Court, the Statutes of the State of Oklahoma providing for the right to appeal a criminal conviction, by casemade, and the State and Federal Constitutional Provisions of Due Process and Equal Protection are involved and are set forth in Appendix A, *infra,* page 31.

## Question Presented

May a state extend to its affluent citizens the absolute right to appeal by casemade their convictions of a misdemeanor in a Municipal Criminal Court of Record, but withdraw said right from an indigent person wholly because of his poverty?

## Summary Statement of Case

Petitioner, hereafter referred to as Defendant, was convicted after jury trial (R. 24-26) in the Municipal Criminal Court hereafter referred to as Respondent Court, which is a Court of Record of the City of Oklahoma City, hereafter referred to as Respondent City, with the crime of driving while under the influence of intoxicating liquor, and his penalty was set at ninety days incarceration together with a fine of fifty dollars (A. 1-2). He subsequently filed his Notice of Intention to Appeal and Request for Casemade at Public Expense (A. 2). At the hearing on his request for casemade *forma pauperis,* the evidence revealed that Defendant was a colored male (Respondent's Brief in Opposition to Certiorari, 4), with a wife and 11 children who depended upon him for their entire support (A. 3). Defendant was a hospital janitor earning about fifty-five dollars ($55.00) per month. (Page 7 of Appendix to Respondent's Brief in Opposition to Certiorari.) The trial court made several crucial findings of fact (A. 4-5): (a) Petitioner's appeal is not wholly without merit (b) Petitioner's appeal cannot be properly presented by a mere transcript of record, but must be presented by at least a partial casemade (c) Petitioner's application for casemade *forma pauperis* is in proper form and is timely filed (d) Petitioner qualifies as an indigent person and (e) neither Petitioner nor his attorney could make up a record of the testimony and proceedings from memory.

The decision of the trial court was expressly based upon a lack of statutory authority upon which to grant relief (A. 5).

Petitioner then petitioned the highest state appellate court, the Court of Criminal Appeals, for a writ of mandamus to require the prosecuting entities, Respondents herein, to furnish a casemade *forma pauperis*. The appellate court assumed original jurisdiction and rendered its decision denying relief. The denial was based upon a lack of statute or ordinance authority and upon the alleged absence of a single instance where by dicta or otherwise the Supreme Court of the United States had intimated that an indigent person, convicted for a violation of a city ordinance, is entitled to a casemade or transcript at city expense in order to appeal from his conviction (A. 10-11).

## Summary of Argument

The State of Oklahoma grants the absolute right to affluent persons to appeal their convictions in Respondent Court directly to the highest appellate court in Oklahoma, the Court of Criminal Appeals. The manner in which the appeal is taken is similarly open to all persons, there being an abbreviated and an extended form of appeal.

However, Respondents have wrongfully withdrawn the right of appeal from Defendant by requiring him to pay for the costs of appeal in advance. This discrimination is on the sole basis of poverty and is prohibited by the Due Process and Equal Protection Clauses of the United States and Oklahoma Constitutions, by *Griffin* v. *People of the State of Illinois,* 351 U.S. 12, by *Duncan* v. *State of Louisiana,* 36 U.S.L.W. 4414 and by other cases construing the rights of indigents to an adequate appellate review.

The discrimination is admittedly on the sole basis of poverty because the trial court made findings of law and

fact that Defendant was an indigent, that his legal procedure was correct, that his legal need was for the long form of appellate review, that his appeal was not without merit and that an adequate appellate record could not be reconstructed from notes or memory (A. 4-5). Both the trial court and state appellate courts based their holdings upon a supposed absence of statutory, ordinance or constitutional authority,[1] which only amounts to a violation of constitutional prohibitions via inactivity, instead of activity. Therefore, Defendant's poverty has barred him from his rightful appeal.

The contention that the Equal Protection and Due Process Clauses do not apply to misdemeanors is not corroborated by any constitutional language nor by the language in the leading opinions of this Court such as the *Griffin* or *Gideon* cases. Even if a "petty-serious" offense distinction has stumbled into existence, the offense of driving while intoxicated is one of a serious nature, nationwide and in Oklahoma. Oklahoma has defined any penalty which includes any incarceration as a significant penalty. Therefore the traditional elements of a "serious offense"—an offense of serious nature and a resulting significant penalty —are present in the instant case.

The judicial administration of justice will not be impaired but rather can be expected to improve from a more lawful, rational, systematic disposition of "small" criminal cases.

There is no category of "quasi-crimes" which can be relevant in this case. There are no other meaningful distinctions which would bar relief.

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[1] Authorities were amply furnished. See R. 29-37 for brief presented to state appellate court. Brief presented to trial court is attached to Petition for Writ of Certiorari, pp. 28-32.

## ARGUMENT

### I.

### A State May Not Make Any Invidious Discriminations Which Preclude an Adequate Appellate Review of a Criminal Conviction.

A. Petitioner's Right of Appeal in Oklahoma Is Absolute.

It is well established in Oklahoma that persons convicted of a crime have been extended an appeal of their conviction as a matter of right. Art. VII Okla. Const. Sec. 15 *infra*, p. 33. Title 22 O.S. 1051 (1961), *infra*, p. 38, provides:

> "An appeal to the Court of Criminal Appeals may be taken by the defendant, as a matter of right from any judgment against him; and upon the appeal, any decision of the court, or intermediate order made in the progress of the case may be reviewed."

The Oklahoma legislature has enacted a specific statute which gives defendant in Respondent Court the absolute right to appeal to the Court of Criminal Appeals " . . . in the same manner and to the same extent . . . " that appeals are taken from a conviction of a felony in district court to the Appellate Court. 11 O.S. 765 (1961) *infra*, p. 33 and 20 O.S. 274 (1961) *infra*, p. 36.

In Oklahoma, as in many other states—including Illinois—there are two methods of perfecting an appeal. The first is by a transcript of record. 22 O.S. 1059, 1060 (1961) *infra*, p. 39. A transcript of record includes only the basic plead-

ings and orders filed in the case, 22 O.S. 977 (1961) *infra*, p. 38, and this manner of appeal cannot be used to present questions regarding a trial court's ruling on admissibility of evidence, motions to suppress or inadequacy of instructions. *Smith* v. *State*, 54 Okl.Cr. 348, 21 P.2d 51 (1933); *Ward* v. *State*, 56 Okl.Cr. 316, 38 P.2d 582 (1934). The second manner of appeal is by what is termed a "case made" (or casemade) 22 O.S. 1059 (1961) *infra*, p. 39. A casemade is a written record, prepared by the court reporter, of all proceedings, written or oral, which have taken place in the trial court. The term "transcript" will hereafter be used to denote the short form of appeal and "casemade" will denote the longer form.

The above statutes do not patently reflect the generally recognized practice in Oklahoma that appellants are charged by the court reporter for the preparation of a casemade but this point has been conceded by the trial court (Appendix A to Respondent's Brief in Opposition to Certiorari, P. 5). The state appellate court acknowledged the right of an indigent felon to appeal by casemade *forma pauperis* (A. 10).

Therefore, it can be seen that an affluent citizen in Oklahoma convicted of a misdemeanor in Respondent Court has an absolute right to appeal his conviction, by casemade, to the Court of Criminal Appeals of the State of Oklahoma.

### B. It Is Fundamentally Unfair to Discriminate in Appeals Solely on Account of Poverty.

It may be well to begin a discussion of prohibited discrimination in appeals at the relative end—or at least at the most recent resting place—which is *Griffin* v. *People of Illinois*, 351 U.S. 12. The material facts of *Griffin* were

identical to those of the instant case except that *Griffin* involved the appeal of a felony whereas defendant is appealing from a misdemeanor.

In Illinois, as in Oklahoma, there was both an abbreviated manner of appeal (there called the mandatory record) and a complete form of appeal (there denoted a transcript, which is the Oklahoma casemade). In Illinois, the long form was uncontestably given free only to indigent appellants convicted of capital offenses. It is given to indigent felons in Oklahoma. In *Griffin,* it was generally conceded that the complete appeal procedure was needed, although there was some feeling in this Court that the case should have been remanded for a more complete determination of need. In the instant case, the trial court found the legal need to exist:

> "The questions raised by defendant's appeal cannot be presented to the proper appellate court by an appeal by Transcript of Record, but must be presented by the preparation of at least a partial casemade herein" (A. 4).

The trial court herein also found that defendant's attempted appeal was not without merit (A. 4-5) and defendant is here, as he was in *Griffin,* clearly an indigent (A. 4-5). In *Griffin,* the Court established that the 14th Amendment guaranties of Equal Protection and probably[2] Due Process call for procedures in criminal trials which allow no invidious discriminations between persons and different

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[2] See discussion pages 11-12, *infra,* and Wilcox, Bertram F. and Bloustein, Edward J., *The Griffin Case—Poverty and The Fourteenth Amendment,* 43 Cornell L.Q. 1, 11-12 (1957); Note: *Adequate Appellate Review for Indigents: A Judicial Blend of Adequate Transcript and Effective Counsel,* 52 Iowa L.R. 902 (1967).

groups of persons. The discrimination imposed against defendant in this case, which has deprived him of his statutory right to appeal solely because of his poverty, is squarely within the holding of the *Griffin* case.

One subsidiary issue discussed and determined again in *Griffin* was that the constitutional guaranties apply to the appeal stage as well as during the initial trial of a case. It was pointed out that all of the states now provide some method of appeal from criminal convictions, which indicates that appellate review is widely thought to be important to a correct adjudication of guilt or innocence. Therefore the appellate function must be granted so as to provide an adequate, as well as equal, review. In *Draper* v. *State of Washington,* 372 U.S. 487, this Court pointed out that the record must be one of sufficient completeness to permit proper consideration of defendant's claims. In the instant case, the only sufficient method of appeal is by casemade since the errors complained of, which raised issues thought by the trial court to be of some merit (A. 4-5) can, in Oklahoma, only be presented by appeal by casemade, or at least a partial one (A. 4-5). *Ward* v. *State*, 56 Okl. Cr. 316, 38 P.2d 582 (1934) *supra.* The inequality produced by defendant's being barred from presenting testimony to an appellate court is emphasized in the instant case by the fact that Respondents have ordered, paid for (presumably) and attached to their Brief in Opposition to Certiorari, a complete written record of the testimony and arguments in the trial court upon defendant's request for a casemade *forma pauperis.* In sum, affluent respondents can obtain for their purposes the very incidents of appeal that have been continuously denied defendant in the trial court and in the state appellate court. This inequality is

prohibited by *Griffin, supra; Draper, supra; Eskridge* v. *Washington State Board,* 357 U.S. 214; *Long* v. *District Court of Iowa,* 385 U.S. 192 and *Roberts* v. *LaVallee,* 389 U.S. 40.

Just as *Griffin* applies to appeals as well as to trials, it is equally clear that an adequate appellate review cannot be provided without the service of counsel as well as a sufficient casemade. In the instant case, defendant, although he is a pauper, does have counsel and therefore the right to counsel is not directly at issue, although it is indirectly before the Court since the right to a casemade would be useless without counsel to aid in its presentation. The two elements are mutually dependent. In *Douglas* v. *People of the State of California,* 372 U.S. 353, 355, the court pointed out that in *Griffin* the issue was deprivation of right to a transcript, which was the same evil as the deprivation of right to counsel on the basis of poverty. Again in *Anders* v. *California,* 386 U.S. 738, this Court held that those procedures are invalid, wherein a rich man, who appeals as of right, enjoys benefit of counsel's examination into record, research of law, and marshalling of arguments on his behalf, while the indigent is forced to shift for himself. The trial court in the instant case found that defendant was not able to make up an adequate written record from memory (A. 5). Even if he could have done so, the need for counsel is pointed out in the language of *Powell* v. *State of Alabama,* 287 U.S. 45, 68-69 which brought out that the defendant in that case was incapable of following the rules of evidence, requiring a proper charge and presenting his defense. There is nothing to indicate that the present case is distinguishable. The charge against defendant is that of unlawfully and wrong-

fully operating a motor vehicle over and upon a (named) street while under the influence of intoxicating liquor contrary to the form of the ordinances in such cases made and provided and against the peace and dignity of the City of Oklahoma City (R. 11). Although no testimony nor findings were made below as to the intelligence or education of the defendant in this case, it would be unusual to encounter a hospital janitor with the education to adequately defend against such a charge, to handle the admission of evidence on the issue of "under the influence" or to submit proper instructions for the jury which would adequately cover his defense. The test of the ability of the accused to fend for himself, suggested in *Arbo* v. *Hegstrom* (D.C. Conn.), 261 F.Supp. 397 (1966) which held that the failure to advise defendant of his right to counsel was a denial of the Due Process clause, is rarely met by the average citizen charged with crime in today's courts of record.

It may be argued that since defendant has his own counsel, i.e. that counsel was not court-appointed, defendant should likewise have to secure his own casemade. But even in the formerly unique situation of an indigent misdemeanant having appellate counsel, the right to a *forma pauperis* casemade—" . . . a record of sufficient completeness . . . "—is one of the vital incidents of adequate appellate review, without which, the most able counsel in the instant case could not be effective. *Draper* v. *State of Washington,* 372 U.S. 487, *supra.*

That the rights to appellate counsel and sufficient written record are provided by the Due Process as well as the Equal Protection clauses of the 14th Amendment to the United States Constitution was probably decided in *Griffin* v. *People of the State of Illinois,* 351 U.S. 12. The four

justices of the initial opinion specifically mentioned both clauses. In addition, the concurring opinion stated at 351 U.S. 12, 22, that the fact a state may deny the right of appeal altogether does not authorize differentiations that have no relation to a rational policy of criminal appeal, nor does it authorize the imposition of conditions " . . . that offend the deepest presuppositions of our society . . . " This is surely the language of Due Process rolled together with that of Equal Protection.[3] Not long before the decision in *Griffin*, the Court held in *Bolling* v. *Sharpe*, 347 U.S. 497, 499, that the concepts of Equal Protection and Due Process, both stemming from our American ideal of fairness, are not mutually exclusive and as this Court has recognized, discrimination may be so unjustifiable as to be violative of Due Process. See also *Uveges* v. *Commonwealth of Pennsylvania*, 335 U.S. 437. Since *Griffin*, more than a few authorities have construed the rights clarified in that opinion as being based upon both Due Process and Equal Protection. *Doyle* v. *United States* (C.A. 9th), 366 F.2d 394, 398-399 (1966); *Gideon* v. *Wainwright*, 372 U.S. 335, 341; *Kelly* v. *State of North Carolina* (E.D. N. Car.), 276 F. Supp. 200 (1967); *Pate* v. *Holman* (C.A. 5th), 341 F.2d 764, 770 (1965); *Petition of Thomas* (W.D. La.), 261 F. Supp. 263, 264 (1966); *State* v. *Cowart* (Sup. Ct. S. Car.), 162 S.E.2d 535, 537 and *Wright* v. *Bailey* (D.C. N. Car.), 228 F. Supp. 560 (1964).

### C. The Crime Charged Is a Serious Offense in Oklahoma.

Respondents have heretofore successfully contended that a casemade *forma pauperis* need not be furnished in this

[3] Wilcox & Bloustein, *supra*, n. 2.

case for the reasons that defendant was only convicted of a "petty offense"; that he was convicted of a misdemeanor instead of a felony; that he was convicted of an ordinance violation instead of a state statute violation or that he was convicted in municipal court[4] instead of state court. Apparently the latter three arguments are merely restatements of the petty offense contention. At any rate, it is defendant's position that none of these alleged exceptions apply in Oklahoma.

The "serious offense" limitation is that persons charged with crimes, which are not serious offenses, do not have the right to counsel guaranteed by the Sixth Amendment to the United States Constitution, as applied by this Court in *Gideon* v. *Wainwright,* 372 U.S. 335. There is no constitutional language to support such a limitation and it is submitted that the practical explanation for this misconception is that due to the lack of counsel willing and available to appeal a misdemeanor to an appellate court of stature, most of the cases that were appealed were felonies, or serious offenses. Since the courts were properly careful not to decide an issue not before them, the right to counsel in misdemeanor cases was not effectively negated. Instead, the serious-petty offense distinction is one of inclusion and not exclusion. This court and lower courts have critically discussed this comparison in *Arbo* v. *Hegstrom* (D.C. Conn.), 261 F. Supp. 397, 400-401 (1966); *Cheff* v. *Schnackenberg,* 384 U.S. 373, 386-387; *Evans* v. *Rives,* 75 U.S. App. D.C. 242, 126 F.2d 633 (1942); *Gideon* v. *Wainwright,* 372 U.S. 335; *Harvey* v. *State of Mississippi*

[4] In *Montgomery* v. *Warden,* 1 Md. A. 30, 226 A.2d 687 (1967) the offense was held to be a serious offense even though prosecuted in municipal court.

(C.A. 5th), 340 F.2d 263, 269 (1965); and *McDonald* v. *Moore* (C.A. 5th), 353 F.2d 106, 110 (1965).

If the "serious-petty" offense distinction has some remaining vitality, it is clear that the offense of driving while intoxicated is in Oklahoma a serious offense.[5] How to classify an offense as serious or petty is to be determined by objective criteria, chiefly existing laws and practices in the nation. *Duncan* v. *State of Louisiana,* 36 U.S. L.W. 4414, 88 S.Ct 1444.

One of the first indicia of the seriousness the citizens of a locality import to a specific offense is whether the right to a jury trial is extended to it. For example, in *Natal* v. *State of Louisiana,* 139 U.S. 621 the defendant was convicted of operating a private market within six blocks of a public market, which carried a maximum sentence of a $25.00 fine or 30 days imprisonment if the fine was not paid. The court held that the violation of this regulatory provision, which was within the police power of the local municipality, was a petty offense which could be tried without a jury. A similar case was *Schick* v. *United States,* 195 U.S. 65, in which the defendant was fined $50.00 for purchasing oleomargarine not stamped according to law. The court relied on the points that the penalty was a fine only and the offense was not one necessarily involving moral delinquency, but was one which could have been the result of ignorance or thoughtlessness. It was held to be a petty offense. Twenty-six years later in *District of Columbia* v. *Colts,* 282 U.S. 63, this Court had occasion to classify an offense which is not as severe as the one in the

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[5] Okla. City, Okla. Rev. Ord. (1960) tit. 21, ch. 6, secs. 27.1, 27.2 (Supp. 1966) *infra,* p. 42.

instant case. In the *Colts* case, defendant was convicted of reckless driving. The maximum penalty for the first offense was $100.00 fine and 30 days in jail. He was given a jail sentence of 30 days.[6] The Court held that the offense was not merely *malum prohibitum* but was *malum in se.* It was an indictable offense at common law which, if resulting in death, would have subjected the driver to a felonious homicide charge.[7] The opinion stated, at 282 U.S. 63, 73:

> "An automobile is, potentially a dangerous instrumentality . . . . To drive such an instrumentality through the public streets of a city so recklessly . . . is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense."[8]

A few years later this Court in *District of Columbia* v. *Clawans,* 300 U.S. 617 (1937) held that the penalty of $300.00 fine and 90 days imprisonment was not, in light of the times, so severe as to raise the offense of conducting a secondhand business without a license to the level of a serious offense requiring jury trial. The Court was careful to note however, at 300 U.S. 617, 627, that " . . . a penalty once thought to be mild may come to be regarded as so harsh as to call for the jury trial . . . "

So firstly the determination of whether an offense is "petty" requires an analysis of the nature of the offense itself as well as the severity of the penalty; even though

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[6] *Colts* v. *District of Columbia* (Ct. App. D.C.), 38 F.2d 535, 536 (1930).

[7] See 21 O.S. 711 (1961) *infra,* p. 37, creating the identical result in Oklahoma.

[8] See also *State* v. *Hoben,* 26 Minn. 436, 98 N.W.2d 813 (1959).

short sentences are fixed for a particular offense a jury trial will be constitutionally required if the offense is of serious character. Secondly, to the extent that the penalty is relevant in this process of characterization, it is the maximum potential sentence, not the one actually imposed, which must be considered. It was so held in the recent case of *Duncan* v. *State of Louisiana,* 36 U.S.L.W. 4414, 88 S.Ct. 1444, in which the defendant was sentenced to 60 days in jail and a fine of $150.00. The maximum sentence possible was two years and $300.00. This Court held that in the absence of explicit constitutional provision, and where the legislature has not otherwise addressed itself to the problem, the definitional task of drawing the line between serious and petty offenses must be determined by the courts according to objective criteria consisting primarily of the law of the locality taken as a gauge of its social and ethical judgments of the crime in question.

Turning to the law of the locality, the Oklahoma legislature has profusely reflected the values of its citizens with considerable legislative activity. From the birth of the state until this year, 1969, the right to trial in criminal cases by a jury of twelve men has remained inviolate. Okla. Const. Art. II Sec. 19 *infra,* p. 31. In 1968, the people, by a statewide vote elected to retain juries for all crimes down to and including offenses for the violation of a city ordinance where the resulting penalty is over $100.00. If imprisonment may be meted out, the offense is a crime. Art. II Okla. Const., Sec. 19 (1968) *infra,* p. 32. The legislature has spoken in Oklahoma to define a crime as any offense which carries a penalty of fine or imprisonment. 21 O.S. 3 (1961) *infra,* p. 37. Lest there remain any confusion about the difference or similarity in the meanings

of "imprisonment" and "incarceration" in Oklahoma, the court held in *Ex Parte Cain,* 20 Okl. 125, 93 P. 974 (1908) that the word "imprisonment" means imprisonment in the county jail or local prison unless expressed to be in the penitentiary. No such expression appears in the statutes relevant to this case. The Oklahoma courts have in 1921 further settled the issue of whether an ordinance violation was a crime. Construing the constitutional and statutory expressions of public will, the court in *Ex Parte Johnson,* 20 Okl.Cr. 66, 201 P. 533 (1921), which involved the crime of operating a movie on Sunday for which the maximum penalty was $50.00 and costs,[9] discussed previous Oklahoma decisions and held that any action, where an accused will or might be subjected to imprisonment on any charge amounting to more than a petit offense, is a criminal action. The Court examined legislative history and held that the statutory declaration, " . . . where the offense may be punishable by imprisonment the defendant shall be entitled to a trial by jury" indicates that such action is criminal in nature. 201 P. 533, 537. The Court further held that "The Federal Constitution, the statutes of this state and decisions of this court have fixed this dividing line (between petit offenses and graver offenses of a criminal character) at a penalty of $20.00, including costs . . . " 201 P. 533, 537. In the earlier case of *Ex Parte Johnson,* 13 Okl. Cr. 30, 161 P. 1097 (1917) the court held that a violation of vagrancy against the Oklahoma City ordinances, carrying a $99.00 fine and 90 days in the county jail, was a crime entitling defendant to a jury trial.[10] The court, quoting

[9] Defendant was jailed for failure to pay the fine.

[10] Citing, *inter alia,* U.S. Const. 6th Amend. *infra,* p. 31 and Art. II Okla. Const. Sec. 7, *infra,* p. 31.

from *Callan* v. *Wilson,* 127 U.S. 540, stated at 161 P. 1097, 1100:

> "It would be a narrow construction of the Constitution to hold that no prosecution for a misdemeanor is a prosecution for a 'crime' within the meaning of the third article, or a 'criminal prosecution' within the meaning of the Sixth Amendment . . . ."

The Court of Criminal Appeals has recently had occasion, in cases similar to this case, to affirm the right to a jury trial in Respondent Court. *Evans* v. *Lambert,* Okl. Cr., 418 P.2d 217 (1966); *Jones* v. *Lambert,* Okl.Cr. 418 P.2d 219 (1966) and *Campbell* v. *Oklahoma City,* Okl.Cr. 425 P.2d 1000 (1967). Moreover, at the time of the *Evans* opinion, the maximum penalty, given by the same court for the same offense as in the instant case, was a fine of twenty dollars ($20.00). Now, the maximum fine for this offense in Respondent Court is ninety (90) days incarceration and a fine of one hundred dollars.[11] Therefore the "seriousness of the offense" is underlined by the fact that even in the absence of an extreme penalty, the character of the offense was thought to be so serious as to require a jury trial.

From the above stated indications of public will in Oklahoma as evidenced by legislative and judicial action over a period of sixty years, it is clear that at the time of the trial of this case, Oklahoma had chosen to draw the line above petty offenses at penalties of $20.00 fines.[12] The new constitutional amendments, initiated and passed since de-

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[11] But defendant can be jailed for failure to pay fine. Okla. City, Okla., Rev. Ord. (1960) tit. 8, ch. 1, sec. .15 *infra,* p. 41.

[12] The amount under the new constitutional amendment is $100.00. Art. II Okla. Const. Sec. 19 (1968) *infra,* p. 32.

fendant instituted his appeal, do not show any change in public attitude which would affect the result in this case since the imposition of any imprisonment still moves the offense into the category of crimes which carry the right to a jury trial. Art. II Okla. Const. Sec. 19 (1968) *infra*, p. 32.[13] Therefore both elements—a significant penalty for an offense of serious nature—have always been present in Oklahoma in regards to the crime of driving under the influence as charged against defendant in Respondent Court. No reason has been suggested in support of this or any other Federal court removing from the people of Oklahoma the right to draw the line between serious and petty offenses according to their aggregate social and ethical judgments.

There are other laws of the locality which can aid in a classification of serious offenses. Just as in *District of Columbia* v. *Colts*, 282 U.S. 63, *supra*, the ordinance violation appealed from herein is also a felony if the accused happens to be arrested by state officials or if the prosecuting entity chooses to accuse a person of the identical violation of state statute instead of a violation of municipal ordinance. 47 O.S. Sec. 11-902 (Laws 1961) *infra*, p. 40. The Oklahoma court in *Ex Parte Johnson*, 20 Okla.Cr. 66, 201 P. 533, 537 (1921) expressly removed the existence of a similar state statute as a basis of their definition of the term "crime". It is conceded in the opinion below (A. 10) that an indigent accused of this same offense in State Court has an absolute right to counsel and to a free transcript. The seriousness of the offense is therefore reflected in the fact that counsel and transcript are provided automatically if the penalty increases. The "character or seriousness" of

[13] See 22 O.S. 16 (1961) *infra*, p. 38.

the offense is exactly the same in both cases and obviously becomes no more difficult to defend against merely because the penalty is increased.

Other legislative indications of community values are available. In *District of Columbia* v. *Colts,* 282 U.S. 63, 73, *supra,* it was noted that if the offense had caused the death of another person, it would result in " . . . some class of felonious homicide . . . " . The same result occurs in Oklahoma under 21 O.S. 711, and 715 (1961) *infra,* p. 37. The legislature and Respondent City have also provided Respondent Court with a full time court reporter and the court operates under all laws applying to courts of record. 11 O.S. 781[14] (Laws 1965) *infra,* p. 34 and 11 O.S. 798 (1961), *infra,* p. 35. The right to counsel is inviolate, Okla. Const. Art. II Sec. 20 *infra,* 33, and there is arguably statutory authority for the right to counsel and transcript *forma pauperis* in a reading together of 11 O.S. 792 (1961) *infra,* p. 34; 11 O.S. 798 (1961) *infra,* p. 35; 20 O.S. 110, and 111[15] (1961) *infra,* p. 35; 20 O.S. 276 (1961) *infra,*[16] p. 36, which in effect provide that the criminal procedure, as well as the fees for court reporters, are the same in Respondent Court as they are in district court. Even if Respondents should prevail in their contention that the above five statutes apply to district court and not to actions

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[14] 11 O.S. 782 (1961) *infra,* p. 34, was at the time of judgment below, authority for Respondent Court's jurisdiction to prosecute violations of state statutes. It was amended in 1968, since the institution of defendant's appeal, to limit the court's jurisdiction to violations of city ordinances.

[15] 20 O.S. 110 and 111 (1961) *infra,* p. 35, were repealed in 1968 since the institution of defendant's appeal and have been substantially re-enacted in 20 O.S. 106.3(b) (Laws 1968).

[16] 20 O.S. 276 (1961) *infra,* p. 36, was repealed in 1968 since the institution of defendant's appeal, and has been re-enacted in substance in 20 O.S. 91.1 (Laws 1968).

in Respondent Court, it is by no means to say that the failure of Respondent City to enact ordinances for the provision of attorneys and casemades *forma pauperis* removes from it the responsibility of doing so. A deprivation of Due Process and Equal Protection can be by failure to act, as well as by actions.

In evaluating whether the Oklahoma dividing line is a reasonable one, it would not be inappropriate to consider the extralegal consequences of a wrongful conviction, such as the loss of a driver's license,[17] and a job, and higher insurance premiums.[18] In this connection, it is submitted that the relative weight of any specific punishment unavoidably falls unequally upon the shoulders of different persons. For example, a $50.00 fine wrongfully meted out to a bank president, would not be as serious a consequence to him as the same fine, wrongfully meted out, would be to a person earning $55.00 a week. The proposition can be viewed from the other way around: If poor persons and affluent persons are to be judged alike, then, in deciding whether a penalty is severe or not, one might begin with the yardstick applicable to the affluent person. Would a school teacher for example, wrongfully incarcerated for 90 days, suffer serious consequences? Would a stockbroker, wrongfully removed from the day-to-day trading of the market, suffer serious consequences from a 90 day incarceration? Then the comparison could move to a consideration of whether a hospital janitor, who is fined almost one week's

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[17] See 47 O.S. 6-205 (1961) *infra*, p. 39, for the Oklahoma mandatory revocation statute. See also *State* v. *Moseng*, 254 Minn. 263, 95 N.W.2d 6 (1959).

[18] Kamisar, Yale and Choper, Jesse H., *The Right to Counsel in Minnesota: Some Field Findings and Legal Policy Observations*, 48 Minn. L.R. 1, 68-70 (1963).

pay and who is wrongfully removed from providing the support for his wife and family for three months, would suffer serious consequences. It is not extravagant to speculate that such a deprivation might well cause the loss of his wife, job and family. Of course this is not to say that it is the government's function to provide a person with a wife, job and family, but it is an essential function of the state to make the best provision possible for justice, in order that it does not wrongfully cause the loss of one's job, wife or family. Somehow, the public in general has in the past seemed to turn a sharper eye to signs of injustice committed in serious cases than it does to questionable misdemeanor convictions. However to the individual of our society who has just been wrongfully deprived of his liberty, there is no such thing as a small wrong. See *Harvey* v. *Mississippi* (C.A. 5th), 340 F2d 263, 269. This court long ago stated in *Glasser* v. *U. S.*, 315 U.S. 60, at page 76:

> "The right to have the assistance of counsel is too fundamental and absolute to allow courts to *indulge in nice calculations as to the amount of prejudice* arising from its denial." (Emphasis added.)

A misapplication of the petty offense distinction appears in *People* v. *Du Pree,* Ill.App., 240 N.E.2d 414 (1968) in which defendant was convicted in municipal court and sentenced to two years, partly suspended, at the Illinois State Farm. The court held that the trial court had no duty to advise defendant of his right to counsel since the state farm was not a penitentiary.[19] The state had argued

[19] Cf. *People* v. *Long,* Ill. App., 221 N.E.2d 507 (1966) which held that defendant sentenced to six months at the Illinois State Farm had a right to counsel.

that there was no right to counsel in misdemeanor cases. An earlier Illinois case arrived at the same result in spite of a one year confinement in the Illinois State Reformatory. *People* v. *Howard,* 41 Ill.App.2d 128, 190 N.E. 2d 3 (1963). In between the two cases, the court held in *People* v. *Manikas,* Ill.App., 230 N.E.2d 577 (1967) that a defendant convicted of speeding and no state driver's license and sentenced to 60 days in the county jail, should have been advised of his right to counsel on the basis of the confinement penalty. For other departures, see *Cheff* v. *Schnackenberg,* 384 U.S. 373;[20] *DeJoseph* v. *Connecticut,* 3 Conn. Cir. 624, 222 A.2d 752 (1966); *James* v. *Headley* (S.D. Fla.), 281 F.Supp. 588 (1968); and *Winters* v. *Beck* (E.D. Ark.), 281 F.Supp. 793 (1968).

For other examples of courts applying the right to counsel in either misdemeanor, petty offense or municipal court cases, see *Bolkovac* v. *State,* 229 Ind. 294, 98 N.E.2d 250 (1961); *Harvey* v. *Mississippi* (C.A. 5th), 340 F.2d 263 (1965); *In Re Henderson,* 39 Cal. Rptr. 373, 393 P.2d 685 (1964); *Patterson* v. *State,* 231 Md. 509, 191 A.2d 237 (1963); *Preston* v. *Municipal Court,* 10 Cal. Rptr. 301 (1961); *Rutledge* v. *City of Miami* (S.D. Fla.), 267 F.Supp. 885 (1967); *State* v. *Anderson,* 96 Ariz. 123, 392 P.2d 784 (1964) and *State* v. *Moosbrugger,* Minn., 116 N.W.2d 68 (1962).

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[20] The Court distinguished *Cheff* from the law applicable in criminal actions in that it was an action for contempt and not subject to the right to counsel in criminal cases.

## II.

**The Application of the Griffin Rule to Misdemeanors Will Improve the Administration of Justice.**

There is one objection which Respondents have not yet raised for the simple reason that it is already strongly implied in any discussion of the legal rights of petty offenders: That the extra burden placed upon the city court system will be prohibitive. Although the state of the law on this subject in New York is apparently not settled, one justice in a recent case parried with a sensible answer. In *People* v. *Letterio,* 16 N.Y.2d 307, 266 N.Y.S.2d 368, 213 N.E. 2d 670 (1965), the Court held that in New York, traffic offenses were held to be petty offenses and therefore the trial court had no duty to even advise indigent defendants of their right to counsel.[21] In the Chief Judge's dissenting opinion, he pointed out at 213 N.E.2d 670, 673 that in 1964 and (estimated) 1965, there were about two million traffic prosecutions, but that only 2% of those did not plead guilty. Of that two per cent, he estimated that a small fraction of those would be indigent and that present legal aid attorneys would be able to handle the small additional burden.

If the great metropolis of New York Ctiy could operate under such a plan, surely it would cause but a ripple in the judicial system of Oklahoma City to grant the relief prayed for in this case. In Oklahoma City, for example, the municipal court is divided into two divisions,[22] one the traffic

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[21] Cf. *People* v. *Witenski,* 15 N.Y.2d 392, 259 N.Y.S.2d 413, 207 N.E.2d 358 (1965).

[22] Okla. City, Okla. Rev. Ord. (1960) tit. 8, ch. 1, sec. .02 *infra,* p. 41.

court division and the other the criminal court division. Okla. City Ord. (1960) tit. 8, ch. 1, sec. .01 *infra*, p. 40. The traffic court division conducts non-jury trials of minor traffic offenses carrying a penalty of a fine only, of under twenty dollars, and ordinarily the cases are heard without the aid of an assistant city attorney. The criminal court division has two courtrooms, each presided over by a single judge, and one of which contains the court of record. The other courtroom is used for non-jury trials of minor criminal offenses and usually is operated without court reporter or city attorney. Generally one assistant city attorney is sufficient to handle the trial dockets in the court of record. Although it has been held that a revenue interest is not a sufficiently compelling reason to justify a state's encroachment upon other personal liberties protected Constitutionally, *Duncan* v. *Louisiana*, 36 U.S.L.W. 4414, 4419, 88 S.Ct. 1444, 1453; *Cohen* v. *Brednoeft* (D.C. Tex.), 290 F.Supp. 1001, 1004 (1968), and *People* v. *Bowdoin* (Crim. Ct. New York City), 293 N.Y.S.2d 748, 753 (1968), judicial notice should be taken that the Oklahoma Municipal Court (all three courtrooms) operated in the 1967-1968 fiscal year at a net profit of about one million dollars.[23] Of further interest is the fact that in the court of record alone, 2305 charges were prosecuted in the year of 1968, of which thirty were tried to a jury.[24] Surely the availability of a transcript

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[23] Certified copy of City Clerk of Oklahoma City, Oklahoma, of Statement of Revenue, Expenditures and Expected Needs *infra*, p. 43. Published in part in Daily Law Journal-Record, Oklahoma City, Oklahoma, Sept. 19, 1968, p. 14. Departments sharing some personnel with the municipal courts are not included in the Respondents' budgetary classifications. Examples of such shared personnel are police and assistant city attorneys.

[24] Affidavit of deputy court clerk of Respondent Court, *infra*, p. 45.

*forma pauperis* extended to that fraction of those thirty defendants who sought to appeal their cases, and who were indigent, would not upset the administration of justice in criminal prosecutions. The need for review was noticed by the Court in *Griffin* v. *People of Illinois,* 351 U.S. 12, 18, in the statistics that show that a large number of convictions are reversed upon appeal.

Instead of hampering the administration of justice, the rise in the government's reputation for fairness would probably result in an overall improvement in the administration of justice. Such was the conclusion of the court in *Brinson* v. *State of Florida* (S.D. Fla.), 273 F. Supp. 840, 843-844 (1967) which followed the federal six months rule and reversed a conviction for a misdemeanor under the maximum sentence possible criteria.[25] The problem was pinpointed succinctly by the writers of the recent President's Riot Commission Report[26] at page 183:

> "Some of our courts, moreover, have lost the confidence of the poor . . . The belief is pervasive among ghetto residents that lower courts in our urban communities dispense 'assembly-line' justice; that from arrest to sentencing, the poor and uneducated are

[25] The defendant was sentenced to 70 days plus another 100 more days for failure to pay fines. The possible maximum sentence was over six months.

[26] The President's National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders* (U.S. Government Printing Office, Washington, D.C. 1968). See also The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society, A Report* 150 (U.S. Government Printing Office, Washington, D.C. 1967) and Task Force on Administration of Justice, *Task Force Report: The Courts,* 29 (U.S. Government Printing Office, Washington, D.C. 1967).

denied equal justice with the affluent, that procedures such as bail and fines have been perverted to perpetuate class inequities. We have found that the apparatus of justice in some areas has itself become a focus for distrust and hostility. Too often the courts have operated to aggravate rather than relieve the tensions that ignite and fire disorders."

## III.

**The Serious Offense Charged Against Defendant Is Not Merely a Quasi-Crime.**

It has been contended below that a violation of a city ordinance is only "quasi-criminal in nature". It is true there are dicta to that effect in the case of *Key* v. *City of Ardmore,* 30 Okl.Cr. 8, 234 P.2d 793 (1925). This was a case wherein the procedure of appeal was in dispute. Plaintiff contended that the case was a civil action and that defendant had followed the wrong appellate procedure. Defendant had followed the appellate procedure for criminal cases. The Court said, once, and only once, in its opinion and not in its syllabus, that the ordinance violation was *at least* quasi-criminal. The Court overruled the attack upon the constitutionality of the procedure and upheld the right to appeal. Its language, at Page 794, is as follows:

> "In the early history of the United States Supreme Court, that Court established the principles that Courts will not declare a statute unconstitutional except in clear and urgent cases—cases so clear as to be clear from doubt. 6 R.C.L. 75 and cases cited.
>
> Applying that rule here, the statute authorizing appeals from penal judgments in municipal courts to the

County Court shall be upheld if it can be done by any rational construction. The power delegated by the state to municipalities to enact penal ordinances to aid the state to keep the peace, cannot, under the Constitution and laws now existing, be construed as a part of our system of civil procedure. The violation of a penal ordinance is at least quasi-criminal—usually denominated a misdemeanor. *Ex Parte Bochman,* 20 Okl.Cr. 78, 201 Pac 537; *Ex Parte Johnson,* 13 Okl.Cr. 30, 161 P. 1097 (1917); *Ex Parte Monroe,* 13 Okl.Cr. 62, 162 Pac 233 (1917) and *Franks* v. *City of Muskogee,* 14 Okl.Cr. 391, 171 Pac 492 (1918)."

The *Key* case above, is the only case found to contain any language which might be the basis of a contention that an ordinance violation of the type in the instant case is not a crime. In *Ex Parte Johnson,* 13 Okl.Cr. 30, 161 P. 1097 (1917) defendant was convicted of vagrancy and sentenced to a fine of $99.00 and 90 days in the Oklahoma City jail. The phrase "quasi-crime" was not even mentioned in the opinion which reversed the conviction for lack of a jury trial in criminal prosecutions. The court in *In Re Monroe,* 13 Okl.Cr. 62, 162 P. 233 (1917) convicted defendant of illegally transporting intoxicating liquor and sentenced defendant to a fine of $99.00 and 90 days in jail. The conviction was reversed on appeal as in *Ex Parte Johnson, supra.* In *Franks* v. *City of Muskogee,* 14 Okl.Cr. 391, 171 P. 492 (1918), defendant was convicted in city court and sentenced to a $25.00 fine. He appealed to county court and was convicted and sentenced therein to a $25.00 fine and 45 days in the county jail. There was no mention of quasi-crime. The court reversed the conviction in city court for lack of a jury trial. The last case cited below by

Respondents is that of *Ex Parte Bochman*, 20 Okl.Cr. 78, 201 P. 537 (1921). Defendant therein was convicted of vagrancy in violation of a municipal ordinance. He was sentenced to a $20.00 fine and $6.00 costs, but was imprisoned in the city jail for his inability to pay his fine and costs. The case was reversed and no mention of quasi-crime was made. Therefore it is clear that there is no underlying judicial decision, nor is there any statute or ordinance which has been cited during this litigation to this date which might give rise to the labeling of the offense in the instant case as merely quasi-criminal.

## Conclusion

Wherefore, defendant prays that Respondents be required to grant to defendant a case made *forma pauperis* as would have been extended to indigent felons wishing to appeal their convictions, as well as an enlargement of time in which to appeal said judgment to the Court of Criminal Appeals of the State of Oklahoma as was initially attempted by defendant, or in the alternative, to refrain from further execution of said judgment and to vacate and expunge it from the records.

Respectfully submitted,

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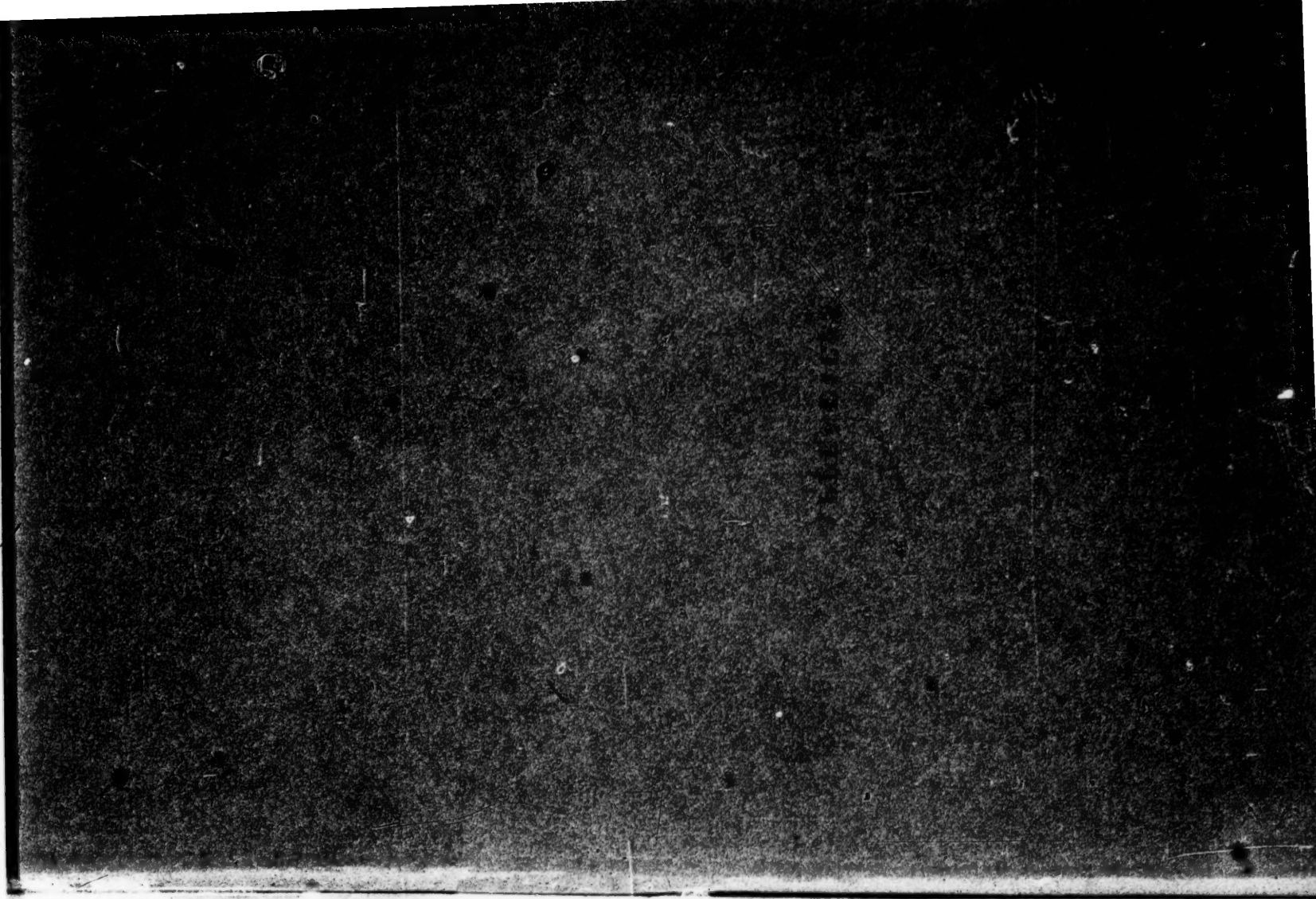
# APPENDICES



## APPENDIX A

CONSTITUTIONAL PROVISIONS

5th Amendment to the United States Constitution

"No person shall be . . . deprived of life, liberty, or property, without due process of law; . . . ."

6th Amendment to the United States Constitution

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . . and to have the Assistance of Counsel for his defence."

14th Amendment to the United States Constitution

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Art. II, Okla. Constitution, Sec. 7

DUE PROCESS OF LAW

"No person shall be deprived of life, liberty, or property, without due process of law."

Art. II, Okla. Constitution, Sec. 19 (1907-1952)

TRIAL BY JURY

"The right of trial by jury shall be and remain inviolate, and a jury for the trial of civil and criminal cases in courts of record, other than county courts, shall consist of twelve men; but, in county courts and courts not of record, a jury shall consist of six men.

This section shall not be so construed as to prevent limitations being fixed by law upon the right of appeal from judgments of courts not of record in civil cases concerning causes of action involving less than twenty dollars. In civil cases, and in criminal cases less than felonies, three-fourths of the whole number of jurors concurring shall have power to render a verdict. In all other cases the entire number of jurors must concur to render a verdict. In case a verdict is rendered by less than the whole number of jurors, the verdict shall be in writing and signed by each juror concurring therein."

Art. II, Okla. Constitution, Sec. 19 (Adopted at election in 1968)

TRIAL BY JURY

"The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Hundred Dollars ($100.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Hundred Dollars ($100.00). Provided, however, that the Legislature may provide for jury trial in cases involving lesser amounts. Juries for the trial of civil and criminal cases shall consist of twelve (12) persons; but in the trial of misdemeanors, proceedings for the violation of ordinances or regulations of cities and towns, juvenile proceedings, actions for forcible entry and detainer, or detention only, of real property and collection of rents therefor, and civil cases concerning causes of action involving less than Twenty-five Hundred Dollars ($2,500.00), juries shall consist of six (6) persons. In civil cases, and in criminal cases less than felonies, three-fourths (¾) of the whole number of jurors concurring shall have power to render a verdict. In all other cases the entire number of jurors must con-

cur to render a verdict. In case a verdict is rendered by less than the whole number of jurors, the verdict shall be in writing and signed by each juror concurring therein."

Art. II, Okla. Constitution, Sec. 20

RIGHTS OF ACCUSED IN CRIMINAL CASE

"In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed. . . . He shall have the right to be heard by himself and counsel . . . "

Art. VII, Okla. Constitution, Sec. 15

APPEALS TO SUPREME COURT FROM COUNTY COURT

"Appeals and proceedings in error shall be taken from the judgments of County Courts direct to the Supreme Court, in all cases appealed from justices of the peace, and in all criminal cases of which the County Court is vested with jurisdiction, and in all civil cases originally brought in the County Court, in the same manner and by like proceedings as appeals are taken to the Supreme Court from the judgments of the District Court."

11 O.S. Sec. 765 (1961)

APPEALS FROM MUNICIPAL CRIMINAL COURTS

"Appeals may be taken from the judgment or order of municipal criminal courts in cities of a population of more than 100,000 according to the last preceding Federal Decennial Census to the Criminal Court of Appeals in the same manner and to the same extent that appeals are now taken from the County Courts to the Criminal Court of Appeals in criminal matters, and no appeals other than those herein provided shall be allowed."

11 O.S. Sec. 781 (laws 1965)

MUNICIPAL CRIMINAL COURTS ESTABLISHED

"In Cities of the State of Oklahoma having a population of more than fifty thousand (50,000) inhabitants as determined by the last preceding Federal Decennial Census, or by the last preceding special Federal Census, there shall be, and is hereby, created and established a Court of Record which shall be known as the 'Municipal Court of the City of .....'. (Naming the city wherein such court is established)."

11 O.S. Sec. 782 (1961)

CRIMINAL JURISDICTION

"From and after the passage of this Act, the Municipal Criminal Courts shall have original jurisdiction to hear and determine all prosecutions, wherein a Violation of any of the ordinances of the City, wherein such a court is established, are charged, *and shall have co-ordinate jurisdiction with the County Court* of the County and Courts of Justices of the Peace of the County in all cases wherein a violation of any Statute of this State is charged, where the offense, or misdemeanor, against the laws of the State shall have been committed within the corporate limits of the City, wherein such a court is established." (Emphasis added)

11 O.S. Sec. 792 (1961)

APPLICATION OF CRIMINAL CODE OF PROCEDURE

"All trials had in the Municipal Criminal Court, except as herein otherwise provided, shall be in accordance with the provisions of the Criminal Code of Procedure, relating to trials of misdemeanor cases in the County Court."

11 O.S. Sec. 798 (1961)

REPORTER

"The Judge of said Court, may, with the consent of the governing body of the City, appoint a suitable and proper person as court reporter, whose duty it shall be to correctly take and record all of the testimony and proceedings had upon the trial of cases when required by either party. The governing body of the City is empowered to fix and determine the compensation to be allowed said reporter including a *salary and fees* for transcribing the testimony and proceedings. In the absence of action by the governing body determining the compensation to be allowed said reporter for transcribing the testimony and proceedings, said reporter *shall receive the same fees* for transcribing the testimony and proceedings that are received by the reporters of the district courts for like services . . . " (Emphasis added)

20 O.S. Sec. 110 (1961)

FEES FOR WRITING TRANSCRIPTS

"In addition to the annual salary now provided by law for each official Court Reporter for the District Court, and for each official court reporter for the Superior Court, each such reporter shall charge and receive One Dollar ($1.00) per page of at least twenty-five (25) lines to the page for writing transcripts; provided that upon request of the party ordering the same, two (2) carbon copies shall be furnished without charge."

20 O.S. Sec. 111 (1961)

TRANSCRIPT IN CRIMINAL CASE—FEE (DISTRICT COURT)

"The Judge may, upon application of either party in a criminal case, direct the official court reporter to

make out and file with the clerk of the court a transcript of his shorthand notes when the same is needed in such case, and he shall receive as compensation therefor One Dollar ($1.00) per page of at least twenty-five (25) lines to the page; provided that, upon request of the party ordering the same, two (2) carbon copies shall be furnished without charge. Provided further, however, that if, before a transcript of the notes is ordered on application of the defendant or his attorney, the defendant shall present to the Judge his affidavit that he intends in good faith to take an appeal in the case and that such transcript is necessary to enable him to prosecute the appeal, and that the defendant has not the means to pay for the same, the court may, at its discretion, order the transcript made at the expense of the county."

20 O.S. Sec. 274 (1961)

CIVIL AND CRIMINAL APPEALS (COUNTY COURTS)

"Appeals and proceedings in error shall be taken from the judgments of county courts direct to the Supreme Court and Criminal Court of Appeals, in all cases appealed from justices of the peace and in all cases appealed from the police judges, and in all criminal cases of which the county court is vested with jurisdiction, and in all civil cases originally brought in the county court, in the same manner and by like proceedings as appeals are taken to the Supreme Court from judgments of the district court."

20 O.S. Sec. 276 (1961)

PLEADING AND PRACTICE

"For the trial of all civil and criminal cases in the county court, the pleadings, practice and procedure, both before and after judgment shall be the same as

that of the district court, except where special statutory proceedings are provided."

21 O.S. Sec. 3 (1961)

CRIME AND PUBLIC OFFENSE DEFINED

"A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit, under this State."

21 O.S. Sec. 711 (1961)

MANSLAUGHTER IN THE FIRST DEGREE DEFINED

"Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor."

• • •

21 O.S. Sec. 715 (1961)

PUNISHMENT FOR MANSLAUGHTER IN THE FIRST DEGREE

"Every person guilty of manslaughter in the first degree is punishable by imprisonment in the penitentiary for not less than four years."

22 O.S. Sec. 16 (1961)

JURY TRIAL—EXCEPTIONS

"No person can be convicted of a public offense, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon final judgment for or against him upon a demurrer to the indictment, or upon a judgment of a police or justice's court in cases in which such judgment may be lawfully given without the intervention of a jury or grand jury."

22 O.S. Sec. 977 (1961)

ENTRY OF JUDGMENT—PAPERS FILED BY THE CLERK —RECORD

"When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together and file the following papers, which constitute a record of the action:

1st. The indictment and a copy of the minutes of the plea or demurrer.

2nd. A copy of the minutes of the trial.

3rd. The charges given or refused, and the indorsements, if any, thereon; and,

4th. A copy of the judgment."

22 O.S. Sec. 1051 (1961)

RIGHT OF APPEAL

"An appeal to the Criminal Court of Appeals may be taken by the defendant, as a matter of right from any judgment against him; and upon the appeal, any decision of the court, or intermediate order made in the progress of the case may be reviewed."

22 O.S. Sec. 1059 (1961)

CASE-MADE IN CRIMINAL CASES

"In all criminal cases appealable to the Criminal Court of Appeals, the appellant may prepare, and it shall be the duty of the court to provide for the preparation and settling of a case-made in all respects as in civil cases, and the case-made so settled, served and filed in the trial court may be sent to the appellate court in lieu of all other records of bills of exception; or the proceeding in the appellate court may be as provided in the next section."

22 O.S. Sec. 1060 (1961)

APPEAL BY CASE MADE AND PETITION IN ERROR —NOTICE—TRANSCRIPT IN LIEU OF CASE MADE

"Instead of the appeal hereinbefore provided for, any party desiring to appeal to the Court of Criminal Appeals in any criminal case may proceed by case made and petition in error by filing notice of such intent and by making request for case made, both to be made in writing, in open court, either at the time the judgment is rendered, or within ten days thereafter. In such an appeal the case made must be settled and served and the appeal lodged within the time for such appeal as hereinbefore set out. Instead of the case made plaintiff in error may attach to his petition in error a transcript of the proceedings of record in the trial court."

47 O.S. Sec. 6-205 (1961)

MANDATORY REVOCATION OF LICENSE BY DEPARTMENT

"The Department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction in any court of record of any of the following offenses, when such conviction has become final:

* * *

2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle;"

47 O.S. Sec. 11-902 (Laws 1961)

PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OF DRUGS

"(a) It is unlawful and punishable as provided in paragraph (c) of this section for any person who is under the influence of intoxicating liquor to drive, operate or be in actual physical control of any motor vehicle within the state . . . "

• • •

"(c) Every person who is convicted of a violation of this section shall be deemed guilty of a misdemeanor for the first offense and upon conviction thereof shall be punished by imprisonment in the county jail for a period of time not less than ten days nor more than one year, and a fine of not more than Five Hundred Dollars ($500.00). Any person found guilty of a second or subsequent offense under the provisions of this section shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state penitentiary for a period of time not less than one year and not to exceed five years, and a fine of not more than One Thousand Dollars ($1,000.00)."

Oklahoma City, Okla. Rev. Ordinances, 1960, Tit. 8 Ch. 1, Sec. .01

COURT CREATED—TRAFFIC AND CRIMINAL DIVISIONS

"The Municipal Court of the City of Oklahoma City shall consist of two divisions, one to be the Traffic Court Division, and the other the Criminal Court Division, each to be presided over by a Municipal Judge as hereinafter provided."

Oklahoma City, Okla. Rev. Ordinances, 1960, Tit. 8 Ch. 1, Sec. .02

JURISDICTION OF DIVISIONS

"The position of Municipal Judge, to be known as Judge of the Traffic Court Division, is hereby established. The Traffic Court Division shall have exclusive jurisdiction over the trial of all cases arising out of violations of the Municipal traffic ordinances, or the general ordinances where such offense is connected with a traffic violation. The other Municipal Judge shall be known as Judge of the Criminal Court Division shall have exclusive jurisdiction over the trial of all other cases arising out of violations of the general municipal ordinances other than those pertaining to traffic."

Oklahoma City, Okla. Rev. Ordinances, 1960, Tit. 8 Ch. 1, Sec. .15

PUNISHMENT AND COMMITMENT

"Whenever any person(s) shall have been arraigned before the Court for a violation of any provision of any City ordinance and shall have pleaded guilty to the charge, or whenever any person shall have been found guilty by the Court upon the trial of the case, the Municipal Judge shall declare and assess the punishment prescribed by ordinance and render judgment accordingly, and for costs of suit, which costs shall be not less than $1.00, and that the defendant stand committed until the judgment is complied with. Upon commitment the Defendant so committed shall be credited at the rate of $1.00 per day upon the fine and costs assessed against him except as hereinafter provided."

Oklahoma City, Okla. Rev. Ordinances 1960, tit. 21 Ch. 6, Sec. 27.1 (Supp. 1966)

DRIVING WHILE UNDER THE INFLUENCE

"It shall be unlawful and an offense for any person to drive, operate or be in actual physical control of any motor vehicle upon the streets or roadways within the corporate limits of this city who is under the influence of intoxicating liquor, or who is under the influence of any narcotic drug, barbiturate, amphetamine, marihuana or who is under the influence of any other drug or substance to a degree which renders him incapable of safely driving a motor vehicle . . . "

Oklahoma City, Okla., Rev. Ordinances, 1960, tit. 21 Ch. 6, Sec. 27.2 (Supp. 1966)

PENALTY

"Any person, firm, association, corporation or co-partnership who shall violate any of the provisions hereof shall be deemed guilty of an offense and upon conviction thereof, shall be punished by a fine in any amount not to exceed One Hundred Dollars ($100.00) or imprisonment not to exceed ninety (90) days, or both such fine and imprisonment together with the costs of such proceedings."

## APPENDIX B

CITY OF OKLAHOMA CITY, OKLAHOMA
GENERAL FUND

Statement of Revenue from Sources
Other Than Ad Valorem Taxes
Fiscal Year 1967-1968

• • •

| Fines and Forfeits | Revenue Collected | Estimated Probable Revenue 1968-1969 |
|---|---|---|
| Criminal Court Fines | $ 248,752.25 | $ 223,877.02 |
| Traffic Court Fines | $1,232,586.00 | $1,109,327.40 |
| Court of Record | 72,867.50 | $ 65,580.75 |

• • •

Summary of Expenditures
Fiscal Year 1967-1968

• • •

| | |
|---|---|
| Municipal Courts | $ 217,675.60 |

• • •

Summary of Estimated Needs
Fiscal Year 1968-1969

MUNICIPAL COURTS

| | |
|---|---|
| Personal Services | $ 209,256.00 |
| Maintenance & Operation | 26,745.00 |
| Capital Outlay | 1,210.00 |
| Total | $ 237,211.00 |

STATE OF OKLAHOMA )
) ss.
OKLAHOMA COUNTY )

I, E. Ray Long, state that I am the duly qualified and acting City Clerk of the City of Oklahoma City, Oklahoma; that the above schedules are true and correct excerpts of the portions of the Statement of Financial Condition, period ending Fiscal Year 1967-1968, Estimate of Needs 1968-1969 and Budget 1968-1969, pertaining to the Municipal Courts of the City of Oklahoma City, which were adopted and approved according to law by the Council of the City of Oklahoma, Oklahoma, on the 18th day of July, 1968, and certified to the County Excise Board of Oklahoma County, Oklahoma as required by law.

Witness my hand and seal this 27 day of January, 1969

/s/ E. RAY LONG
E. Ray Long, City Clerk

SEAL

## APPENDIX C

STATE OF OKLAHOMA )
) ss
OKLAHOMA COUNTY )

AFFIDAVIT

I, MARCIA SNEAD, state that I am a duly appointed, acting and qualified deputy court clerk of the Municipal Criminal Court of Record of the City of Oklahoma City, Oklahoma; that I have held such office prior to and during the year 1968; that my duties and responsibilities include the keeping of records in connection with the trials of cases in said courts; that during the year 1968, 2305 Informations were filed in said court charging the defendants therein with offenses against the ordinances of the City of Oklahoma City and that of said charges, the number of defendants in whose cases jury trials were commenced totaled 30.

Witness my hand and the seal of this Court this 28th day of January, 1969.

/s/ MARCIA SNEAD
Marcia Snead,
Deputy Court Clerk

SEAL:

LIBRARY
SUPREME COURT, U. S.

FILED
MAR 3 1969
JOHN F. DAVIS, CLERK

In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

## No. 841

TOMMIE E. L. WILLIAMS,
*Petitioner,*

VERSUS

CITY OF OKLAHOMA CITY, ET AL.,
*Respondents.*

**On Writ of Certiorari to the Court of Criminal Appeals of Oklahoma**

# BRIEF OF RESPONDENTS

ROY H. SEMTNER
Municipal Counselor

GILES K. RATCLIFFE
Assistant Municipal Counselor
309 Municipal Building
Oklahoma City, Oklahoma 73102

*Attorneys for Respondents.*

February, 1969

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. CE 5-0030

PETITION FOR CERTIORARI FILED APRIL 29, 1968
CERTIORARI GRANTED DECEMBER 16, 1968

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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 841

TOMMIE E. L. WILLIAMS,
*Petitioner,*

VERSUS

CITY OF OKLAHOMA CITY, ET AL.,
*Respondents.*

**On Writ of Certiorari to the Court of Criminal Appeals of Oklahoma**

# BRIEF OF RESPONDENTS

## QUESTION PRESENTED

Should the Rule announced in *Griffin* v. *People of Illinois,* 351 U.S. 12, be extended to encompass appeals from convictions of violating Municipal Ordinances, and, if so, should it be applied to the case at bar?

## ARGUMENT

### I.

### The Rule Announced in the Griffin Case Should Not Be Extended to Encompass Violations of Municipal Offenses.

The maximum penalty that can be imposed on Petitioner or any other individual found guilty of violating a Municipal Ordinance in Respondent City is a fine of $100.00 or imprisonment not to exceed 90 days, or both such fine and imprisonment (Appendix A—Petitioner's Brief p. 42).

As pointed out in the recent case of *Duncan* v. *State of Louisiana,* 88 S.Ct. 1444, there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provisions and should not be subject to the Fourteenth Amendment jury trial requirements; crimes carrying possible penalties up to six months do not require jury trial if they otherwise qualify as petty offenses.

In the Federal System petty offenses are defined as those punishable by no more than six months in prison and a $500.00 fine (18 U.S.C. 1).

In the cases of *District of Columbia* v. *Clawans,* 57 S.Ct. 660, and *Cheff* v. *Schnackenberg,* 86 S.Ct. 1523, this Court generally held that the penalty authorized for a particular crime is of major relevance in determining whether the crime is serious or petty.

The lack of seriousness of the offense in question is shown by the fact that transcripts are provided as Petioner says "automatically if the penalty increases" (Petitioner's Brief p. 19) and yet the Legislature in Oklahoma has not seen the necessity to provide case-made at public expense in cases involving Municipal Offenses.

The right to trial by jury is infinitely more fundamental to American Jurisprudence than the right of appellate review.

If a rational line of demarcation can be drawn between serious and petty offenses relative to the granting or withholding of the right to jury trial, why should not the same reasoning apply to the case at bar?

## II.

### Limitation of the Griffin Rule

In the case of *Griffin* v. *People of Illinois*, 351 U.S. 12, and subsequently in *Eskridge* v. *Washington State Board of Prison Terms and Paroles*, 357 U.S. 214, this Court established the law relative to the right of every individual to an adequate record for appellate review of his conviction.

Admittedly those cases dealt with convictions of offenses defined as felonies.

In the case at bar the Petitioner was found guilty by a jury of an offense of violating a City Ordinance held by the Oklahoma Court of Criminal Appeals to be quasi criminal in nature and often referred to as a petty offense (A. 10-11).

The question before the Appellate Court below was one of first impression. Candor compels acknowledgment that a similar question was presented to the Appellate Courts of California on three separate occasions. In the case of *Hidalgo* v. *Municipal Court*, 277 P.2d 36 (1954) the Writ of Mandate commanding the preparation of a transcript at public expense was denied. It is noted, however, that this case was decided almost two years before the Griffin Rule was announced by this Court. In the other two cases, *Preston* v. *Municipal Court*, 10 Cal. Reptr. 301 (1961) and *In re Henderson*, 393 P.2d 685 (1964) the California Courts, in substance, held that under certain circumstances indigent petitioners are entitled to reporter's transcript without charge.

Respondents contend, however, that *Griffin, supra, Eskridge, supra, Hidalgo, supra, Preston, supra,* and *In re Henderson, supra,* acknowledge certain application of limitations to the Griffin Rule and that they do not require that a case-made (reporter's transcript) be furnished at public expense in all cases, but only in those cases wherein to deny the record would in effect impose penalty by denying right to appeal to one who by reason of poverty is unable to provide the record.

Other limitations[1] to the application of the Griffin Rule have been announced by Courts in several jurisdictions. The Supreme Court of Washington in *Grady* v. *Schneckloth,* 314 P.2d 930 (1957) and in *Ross* v. *Rhay,* 318 P.2d 975 (1957) held that where an indigent defendant had prepared a narrative statement of facts which would have been sufficient to obtain a review, but failed to heed the suggestion of the Chief Justice that it be filed and certified, Griffin did not require the state to supply a free stenographic transcript. Decisions to the same effect have been rendered by the Supreme Court of Tennessee in *Beadle* v. *State,* Tenn., 310 S.W.2d 157, and the Supreme Court of North Dakota in *State* v. *Moore,* 82 N.W.2d 217.

Another limitation of the application of the Griffin Rule is that an indigent petitioner is not entitled to a free transcript where it is determined that the appeal is frivolous. This limitation was announced by Justice Frankfurter in his concurring opinion at 351 U.S. page 24.

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[1] See discussion pages 76-78. The Impact of Griffin v. Illinois on State Court-Federal Court Relationships by Honorable Frederick G. Hamley, United States Circuit Judge, 24 Fed. Rules Dec. 75.

Also we note in the case of *Leyvas* v. *United States*, 264 F.2d 272 (1958) the Ninth Circuit Court held that a defendant in a Federal criminal prosecution is not entitled to a daily typewritten transcript at public expense.

## III.

### Griffin Rule Not Applicable to Case at Bar

Where two methods of review are available and each appears capable of producing an adequate record, one of which is by means of a statement of evidence in narrative form to be prepared by counsel, or by the court, and the other by means of case-made to be furnished at public expense, does a petitioner have an absolute right by reason of poverty to select the method most expensive to the public?

Is it sufficient for the Petitioner and his counsel to simply allege that they are unable to prepare from memory a complete transcript of the record and thereby relieve themselves of the responsibility of making any effort to do so?

Respondents urge that the answer to each question is negative and that it is not oppressive nor repugnant to the Constitution of the United States to require an indigent, who seeks a free case-made, to sustain the burden of showing that no alternative mode of appellate review is adequate or available.

What constitutes an adequate record will, of necessity, vary in content from case-to-case depending upon the complexities of same.

Respondents contend that a statement of evidence in narrative form could produce an adequate record for review in the instant case.

In the case at bar the Petitioner and his counsel, who incidentally is a paid employee of the Legal Aid Society of Oklahoma County, Inc., and by reason thereof suffers no financial loss by reason of his representation of this Petitioner, simply allege that they are unable to prepare from memory a complete case-made; but the record shows no effort was made to do so.

In the case of *Harris* v. *State,* 137 Pac. 365, 369, 139 Pac. 846, the Court of Criminal Appeals of Oklahoma said:

> "* * * if for any reason the stenographer's notes could not be obtained, that then it was the duty of such lawyers to use their best exertion to make up a casemade from memory, and, if they failed to do so, the defendant would be held responsible for this neglect of duty on their part. Also, see Dobbs v. State, 5 Okl. Cr. 475, 114 Pac. 358, 115 Pac. 370. The writer of this opinion practiced law many years in Texas before court stenographers were known in that state, and when, under the law, the evidence had to be written out as a matter of memory by the attorneys and filed in court within ten days from the adjournment of the term of court. The writer never had the least difficulty in preparing his statements of the evidence in his cases, and he knows from personal experience that it can easily be done. In fact he seriously doubts if the employment of court stenographers is at all necessary either in the administration of justice or to the development of lawyers. It has a tendency to breed carelessness on their part; but, be this as it may, the trial court has a large discretion as to when to order the stenographer's notes to be extended without ex-

pense to a defendant, and this discretion will not be reviewed, unless it clearly appears from the record that it was arbitrarily used or abused."

In a case now pending on Petition for Certiorari before this Court—*Byers* v. *City of Oklahoma City, et al.*, No. 652 Misc. O.T. 1968, in which a motion to consolidate that case with the instant case is still pending, we have a situation similar to the one we have here, wherein counsel here, who is also counsel there, makes the identical allegation—that they are unable to prepare from memory a complete case-made and yet counsel for Petitioner proceeded to do so. He prepared a Partial Transcript of Testimony and Proceedings at Jury Trial and same was approved by the court and counsel.

He elected, however, not to perfect his appeal on this record but did instead proceed by way of a Petition for a Writ of Mandamus.

The evidence and testimony deemed necessary by Petitioner in order to properly present his case on appeal are set forth at page three of reporter's transcript of the proceeding on "Application for a Casemade at Public Expense," a copy of which is attached to Respondents' Brief in Opposition as Appendix A.

It consists of testimony of three of the City's witnesses, the affidavit of the person who, it is alleged, was driving the car and the testimony of the Petitioner. Surely the Petitioner's testimony could be prepared in narrative form, and the affidavit of the person who allegedly drove the car has already been obtained. So, only the testimony of the three City witnesses remains to be supplied. This case was

tried in one day and no allegations are made that the testimony dealt with complex matters.

Perhaps the parties have been careless with their use of the words "case-made" and "transcript." Although these words may have been used interchangeably in the briefs, they are not interchangeable under the law in Oklahoma.

In *Bennett* v. *State,* 152 P.2d 388, in Syllabus No. 2 by the Court, the Court of Criminal Appeals of Oklahoma said:

> "2. A 'case-made' consists of those things which transpired in court during the trial and which are not a part of the record, while a 'transcript of the record' contains everything of which the clerk is required to make a record."

With this distinction in mind we direct the Court's attention to the language of the trial court in its Journal Entry Overruling Defendant's Application for Case-Made at Public Expense (A. 4):

> "2 The questions raised by defendant's appeal cannot be presented to the proper Appellate Court, by an appeal by Transcript of Record, but must be presented by the preparation of at least a partial casemade herein."

We submit that the court's intent and meaning is quite clear. The court is saying that records made by the Clerk are not in themselves sufficient to present an adequate record for appellate review. Respondents have never contended that they are, but we do submit and contend that a statement of the evidence in narrative form in lieu of a case-made would produce an adequate record for appellate review.

Petitioner has submitted several affidavits of people purporting to have knowledge of certain facts germane to the case at bar. These people did not testify at the trial so obviously a copy of the case-made, regardless of who pays for it, could not reproduce their testimony. Petitioner, therefore, contends that it is perfectly acceptable to present this evidence in narrative form. How, then, could Petitioner be prejudiced by offering in narrative form the testimony of the witnesses who did testify at the trial where their testimony was heard by the court and counsel and was tested in the fire of cross-examination?

## IV.

### The Application of the Griffin Rule to Quasi Criminal and Petty Offenses Will Add Additional Burden to the Municipal Court System.

Petitioner calls the Court's attention to one objection which Respondents have not raised heretofore (Petitioner's Brief p. 24). Respondents have not raised this objection for the simple reason that the *present* Municipal Court of Record was established by Ordinance duly adopted December 27, 1967,[2] and, therefore, sufficient evidence is not available to evaluate the total impact an adverse ruling would have on the already taxed Court System.

However, since Petitioner has raised the issue Respondents would like to correct any misconception that might arise in the minds of some by reason of the Statement of Revenue attached to Petitioner's Brief as Appendix

---

[2] Certified copy of Ordinance No. 11839 adopted by Oklahoma City Council, December 27, 1967 (Appendix A, pp. i-v).

B. It is totally erroneous to say that the operation of the Municipal Court System produces a net profit of one million dollars.

As pointed out at footnote 23, page 25 of Petitioner's Brief, the cost of personal services of the Police Department and the Assistant City Attorneys are not included in the Statement of Revenue. Surely Petitioner does not contend that these are not proper items of expense chargeable to the operation and administration of the Municipal Court System as are the costs of acquisition, operation and maintenance of the many pieces of equipment utilized in the enforcement of the Municipal Ordinances.

Admittedly the application of the Griffin Rule will add additional burden to the Municipal Court System. How much, is speculative.

## CONCLUSION

For the reasons stated, Respondents respectfully submit that the judgment of the Court of Criminal Appeals of the State of Oklahoma should be affirmed, or, in the alternative, be remanded for a more complete determination of need.

Respectfully submitted,

ROY H. SEMTNER
Municipal Counselor

GILES K. RATCLIFFE
Assistant Municipal Counselor
309 Municipal Building
Oklahoma City, Oklahoma 73102

*Attorneys for Respondents*

February, 1969

# APPENDIX A

(72055A)

(Published in the Daily Law Journal-Record

December 28, 1967)

ORDINANCE NO. 11,839

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF MUNICIPAL COURTS; SETTING FORTH JURISDICTION OF COURTS; PROVIDING FOR THE QUALIFICATION AND APPOINTMENT OF JUDGES AND SPECIAL JUDGES AND THE SELECTION OF A PRESIDING JUDGE; DESCRIBING DUTIES OF PRESIDING JUDGE; DEFINING TERMS; REQUIRING ATTENDANCE AT COURTS; ESTABLISHING PROCEUDRE FOR COURTS; REPEALING SECTIONS 1 THROUGH 9, BOTH INCLUSIVE, CHAPTER 1, TITLE 8, REVISED ORDINANCES OF OKLAHOMA CITY, 1960, AND ALL ORDINANCES AND RESOLUTIONS OR PARTS THEREOF IN CONFLICT HEREWITH; PROVIDING FOR INDEXING OF THIS ORDINANCE AND DECLARING AN EMERGENCY.

Emergency Ordinance

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OKLAHOMA CITY:

SECTION 1. Indexing. The following sections shall be indexed as Sections 1 through 9, Chapter 1, Title 8, Revised Ordinances of Oklahoma City, 1960, as amended:

8.1.01 Courts Created:

The Municipal Courts of the City shall consist of the following:

(a) Court of Record

(b) Criminal Court

(c) Traffic Court

(d) Such other Courts as may hereafter be established.

8.1.02 Jurisdiction of Courts:

(a) The Court of Record shall have such jurisdiction as provided by the laws of the State of Oklahoma;

(b) The Criminal Court shall have jurisdiction over the trial of all cases arising out of violations of the general municipal ordinances other than those pertaining to traffic;

(c) The Traffic Court shall have jurisdiction over the trial of all cases arising out of violations of the municipal traffic ordinances, or the general ordinances where such offense is connected with a traffic violation;

(d) Upon the creation of an additional court, the Council shall by ordinance name the court and establish its jurisdiction.

(e) Until such time as juries are provided for the Criminal Court and the Traffic Court, no charges shall be filed in either of these court divisions where the prescribed penalty exceeds a fine and costs of $20.00.

8.1.03 Appointment and Qualifications of Judges.

(a) The Council shall appoint a minimum of three (3) Judges who shall serve as judges of all the Municipal Courts. One judge shall be the Municipal Judge and the other judges shall be Associate Municipal Judges;

(b) Each Judge shall have had prior to his appointment a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma; shall continue to be a licensed attorney while in office and possess the qualifications set forth in the Charter and Personnel Resolution of The City of Oklahoma City.

8.1.04 Special Judges.

The Council shall appoint a minimum of five (5) Special Judges who shall possess the same qualifications as the Municipal Judges and shall act as Municipal Judge during the absence, illness or disqualification of a Municipal Judge.

8.1.05 Construction.

Whenever in the present Charter, its amendments, or in the general ordinances of the City, the words "Municipal Judge" are used, said words shall refer to the Judges of all the Municipal Courts, unless express provision is elsewhere made to the contrary.

8.1.06 Presiding Judge; Selection of

The Council shall select a Presiding Judge from among the Municipal Judges.

8.1.07 Duties of Presiding Judge.

In addition to his regular duties as a Municipal Judge, the presiding judge shall:

(a) Assign cases from the various Municipal Courts among the Judges as he deems best.

(b) Assign duty to one or more Special Judges in case of the absence or inability of any of the Municipal Judges.

(c) Promulgate uniform rules of procedure for the operation of all Municipal Courts.

(d) Act as the Department Head.

(e) Review the list of Special Judges annually or at sooner intervals as may be necessary and recommend appointments to the Council.

(f) On or before the tenth day after the end of each month make a report to the Council detailing the activities of the Municipal Courts during the preceding month.

(g) Perform such other acts as required to execute the ordinances and resolutions of the City, the City Charter and the Statutes of the State.

(h) "Nothing in the ordinance shall be construed as encroaching in any manner upon the duty, obligation and power of the judges of the Municipal Courts to be the sole judge of the merits of the respective cases before them and to render their judgmnts accordingly."

8.1.08 Police and Other Officers to Attend.

The Chief of Police, in person or by his assistant, shall attend all sessions of said court, and shall be present in person or by his assistant at the opening of each session. Policemen shall attend the session when the business of the court requires their attendance. An Assistant Municipal Counselor may attend sessions and represent the City of Oklahoma City in all matters before said Court, when requested by the Mayor, Manager or Chief of Police and so assigned by the Municipal Counselor.

8.1.09 Procedure.

(a) The procedure in the Court of Record shall be in accordance with the applicable provisions of the Constitution and laws of the State of Oklahoma and such cases made and provided.

(b) The procedure in the Criminal Court and Traffic Court shall be as set forth in Title 8, Chapter 1, Sections 10 through 13 and 24 through 28, Oklahoma City Revised Ordinances, 1960.

SECTION 2. Repealer. Sections 1 through 9, both inclusive, Chapter 1, Title 8, Revised Ordinances of Oklahoma City, 1960, are hereby repealed; Resolutions previously adopted by the Council of The City of Oklahoma City on June 8, 1965, September 15, 1965, and January 25, 1966, pertaining to Municipal Courts and Judges thereof are repealed insofar as the provisions thereof conflict with this

ordinance; all other ordinances and resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 3. Severability. If any section, sub-section, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. Emergency. WHERAS, it being immediately necessary for the preservation of the peace, health and safety of Oklahoma City and the inhabitants thereof that the provisions of this Ordinance shall take effect and be in full force from and after the date provided herein, as provided by law.

INTRODUCED and read in open meeting of the Council of The City of Oklahoma City, Oklahoma, on the 27th day of December, 1967.

PASSED by the Council of the City of Oklahoma City, Oklahoma, on the 27th day of December, 1967.

APPROVED by the Mayor of The City of Oklahoma City, Oklahoma, on the 27th day of December, 1967.

JAMES H. NORICK,
Mayor.

(Seal)

Attest: E. RAY LONG,
City Clerk.

# WILLIAMS *v.* OKLAHOMA CITY ET AL.

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA.

No. 841. Argued April 1–2, 1969.—Decided June 9, 1969.

The denial to petitioner, an indigent who was convicted of drunken driving, of a copy at public expense of the trial transcript which he needed to perfect an appeal, to which he was entitled "as a matter of right" under Oklahoma law, is a violation of the Fourteenth Amendment.

439 P. 2d 965, reversed and remanded.

*Jon F. Gray* argued the cause and filed a brief for petitioner.

*Giles K. Ratcliffe* argued the cause for respondents. With him on the brief was *Roy H. Semtner.*

PER CURIAM.

Petitioner, an indigent, had no funds to pay for a transcript of the trial proceedings in the Municipal Criminal Court of Oklahoma City required to prepare the "case-made" needed to perfect his appeal to the Oklahoma Court of Criminal Appeals from his conviction for drunken driving and the imposition of a 90-day jail sentence and a $50 fine.* The trial proceedings had been

*The pertinent Oklahoma statutes provide as follows:

Okla. Stat. Ann., Tit. 22, § 1059 (1958):

"In all criminal cases appealable to the Criminal Court of Appeals, the appellant may prepare, and it shall be the duty of the court to provide for the preparation and settling of a case-made in all respects as in civil cases, and the case-made so settled, served and filed in the trial court may be sent to the appellate court in lieu of all other records or bills of exception; or the proceeding in the appellate court may be as provided in the next section."

Okla. Stat. Ann., Tit. 22, § 1060 (Supp. 1968):

"Instead of the appeal hereinbefore provided for, any party desiring to appeal to the Court of Criminal Appeals in any criminal

stenographically transcribed pursuant to Oklahoma law, Okla. Stat. Ann., Tit. 11, § 798 (1959), Okla. Stat. Ann., Tit. 20, §§ 110–111 (1962), but the trial court had refused in the absence of statutory authority to order that a copy be provided petitioner at public expense, although finding that petitioner was an indigent whose grounds of appeal were not without merit, and that neither petitioner nor his appointed counsel could make up a transcript of the trial proceedings from memory. The Court of Criminal Appeals, in an original proceeding brought by petitioner, also refused to order that petitioner be provided a copy at public expense. The court agreed with the trial court that no Oklahoma statute or Oklahoma City ordinance authorized such an order, and held further that the Fourteenth Amendment did not mandate "that an indigent person, convicted for a violation of a city ordinance, quasi criminal in nature and often referred to as a petty offense, is entitled to a case-made or transcript at city expense in order to perfect an appeal from said conviction." 439 P. 2d 965 (1968). We granted certiorari. 393 U. S. 998 (1968). We reverse.

"This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts. *Griffin* v. *Illinois*, 351 U. S. 12; *Douglas* v. *California*, 372 U. S. 353; *Lane* v. *Brown*, 372 U. S. 477; *Draper* v. *Washington*, 372 U. S. 487." *Rinaldi* v. *Yeager*, 384 U. S. 305, 310–

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case may proceed by case made and petition in error by filing notice of such intent and by making request for case made, both to be made in writing, in open court, either at the time the judgment is rendered, or within ten days thereafter. In such an appeal the case made must be settled and served and the appeal lodged within the time for such appeal as hereinbefore set out. Instead of the case made plaintiff in error may attach to his petition in error a transcript of the proceedings of record in the trial court."

311 (1966). Although the Oklahoma statutes expressly provide that "[a]n appeal to the Court of Criminal Appeals may be taken by the defendant, *as a matter of right* from any judgment against him . . . ," Okla. Stat. Ann., Tit. 22, § 1051 (Supp. 1968) (emphasis added), the decision of the Court of Criminal Appeals wholly denies any right of appeal to this impoverished petitioner, but grants that right only to appellants from like convictions able to pay for the preparation of a "case-made." This is an "unreasoned distinction" which the Fourteenth Amendment forbids the State to make. See *Griffin* v. *Illinois, supra; Draper* v. *Washington, supra; Eskridge* v. *Washington State Board,* 357 U. S. 214 (1958).

The judgment of the Court of Criminal Appeals is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

MR. JUSTICE BLACK concurs in the result.